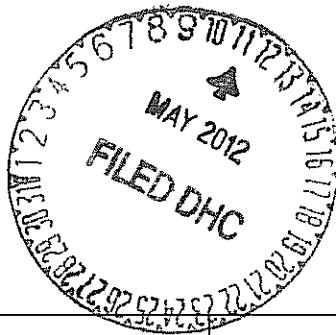


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE DISCIPLINARY  
HEARING COMMISSION OF THE  
NORTH CAROLINA STATE BAR

12DHC15

THE NORTH CAROLINA STATE BAR,

PLAINTIFF

v.

MICHAEL C. PARK, Attorney

DEFENDANT

ANSWER

Defendant answers complaint as follows:

1. Affirmed
2. Affirmed
3. Affirmed

**FIRST CLAIM FOR RELIEF**

4. Affirmed
5. Affirmed
6. Affirmed
7. Denied in part.

The above mentioned closing occurred on November 29, 2007, and Defendant and his staff of paralegals conducted the closing, including distributing funds, preparing documents, and recording of documents. The deed and deeds of trust for the transaction were sent to the Gaston County register of deeds immediately following the closing.

Unknown at the time, it appears that Gaston County had recorded the deeds of trust, but not the deed. Unfortunately, Defendant did not receive the rejected deed from Gaston County and was unaware that it had not been recorded along with the deeds of trust. The fact that the deeds of trust were recorded likely contributed to the confusion of whether the recording had taken place.

Once Defendant was made aware of the issue through the Grievance filed by Mr. Lewis, Defendant sought to remedy the error. However, it was discovered that the deed had subsequently been recorded in Gaston County.

The error surrounding the recording was an inadvertent error, and due to the timing of shutting down his practice, Defendant was unaware of the error at the time it occurred.

8. Denied.

Defendant funded the transaction in accordance with NC Rules of Professional Conduct. Defendant sent checks to all parties as indicated on the Settlement Statement. Checks disbursed and cleared were accounted for utilizing the reconciliation of the ProTrust ledger and bank statement. Any checks which were cashed by any the recipients were accounted for.

Based on the 2005 Formal Ethics Opinion 11, Defendant maintained a Recording Account, in which Defendant maintained his own funds to pay for the recording of documents. The Recording Account was not a trust account. Defendant would charge for payment of recording fees on the HUD-1 in order to reimburse for the cost of advancing the recording, including an applicable mark-up as allowed by 2005 Ethics Opinion 11. However, Defendant's practice was to only use this practice on refinance transactions and not purchase transactions. In this case, the paralegal processing this closing appeared to process the recording charges via the Recording Account. It appears that the paralegal believed that the recording had properly taken place and proceeded to disburse all funds, including the reimbursement for recording costs advanced by Defendant. This appears to be why the recording fees did not appear on Defendant's 'Outstanding Checks' report, generated by the SoftPro software.

Defendant did settle a civil suit with Mr. Lewis, personally reimbursing him for fees that were charged, without admitting any wrongdoing. Defendant felt that Mr. Lewis was entitled to receive a refund, plus applicable charges for the inconvenience surrounding the recording error.

### **SECOND CLAIM FOR RELIEF**

9. Affirmed

10. Affirmed

11. Denied in part.

Defendant and his staff conducted the referenced closing, including sending the deed and deed of trust to the Mecklenburg County Register of Deeds. It appears that the recording was rejected, and returned. Unfortunately, this was one of the last closings conducted by Defendant, and the returned deed was not forwarded to him.

By the time Defendant was made aware of the Grievance involving this transaction, the deed and deed of trust had been recorded in Mecklenburg County by another firm.

This was an inadvertent error, and was complicated by the fact that Defendant had moved and did not receive the rejected recording.

12. Complaint does not list #12.

13. Denied in part.

Defendant did send checks for the recording . Since the recording was rejected, the funds remain in Defendant's trust account. Upon notice of the original Grievance, Defendant requested guidance as to whether it was appropriate to return the recording fees to the appropriate parties. Defendant was told that the State Bar could not issue advice on the matter.

### **THIRD CLAIM FOR RELIEF**

14. Affirmed.

15. Affirmed.

16. Denied.

After July 2008, there were no transactions to be reconciled. Checks for all real estate transactions conducted by Defendant had been sent to the appropriate parties. Any balance remaining in the account is due to any checks that remained uncashed by the recipients. To Defendant's knowledge, no checks have cleared the account, nor have there been any incoming or outgoing funds since June 2008.

Since there were no activity in the account, there was nothing for Defendant to reconcile.

17. Same answer as #16.

18. Affirmed in part.

Defendant was unaware that the rule of providing an accounting for funds held longer than one year applied to real estate transactions where the attorney has made reasonable efforts to send all proceeds to the appropriate parties.

19. Denied

Defendant has not received nor disbursed any client funds since June of 2008. Since there was no activity to reconcile or report.

20. Denied.

Defendant has made reasonable efforts by sending all proceeds checks in accordance with the closings he conducted. At no time have any funds been retained in the trust account due to Defendant's direction. Any funds that remain in the account have been uncashed checks sent to recipients.

THEREFORE, Defendant claims that he did not violate the Rules of Professional Conduct as follows:

- a) Defendant keep full and accurate trust account records, including utilizing a third-party reconciliation service until December of 2007. Defendant utilized the SoftPro reconciliation service, which aided in reconciling monthly trust account bank statements with the individual ledgers from each real estate closing. All transactions were reconciled by that company, completely and accurately. Between January 2008 and June of 2008, Defendant personally reconciled the few remaining transactions, as part of winding down his law practice. The last transaction took place in February 2008. After June of 2008, no remaining checks (outstanding checks) have cleared the trust account, therefore, there was nothing additional to reconcile or report.
- b) Defendant was unaware that the rule to provide an accounting for funds for more than 1 year applied to real estate transactions where all checks had been sent to appropriate parties, and the client had been provided a settlement statement, instructing them how the funds would be disbursed.
- c) Defendant did keep full and accurate records of funds received from clients. At no time have client funds been unaccounted for.
- d) Defendant did promptly send all proceeds checks to appropriate parties. A small amount of proceeds checks remain uncashed by the recipients.
- e) Any recording errors were inadvertent, and once Defendant was made aware, he sought immediately to correct them. In both cases, the recordings had already been corrected by the time Defendant was made aware of any Grievance.

WHEREFORE, Defendant prays that:

- (1) The Complaint be Dismissed,
- (2) Disciplinary action not be taken against Defendant;
- (3) In the event the Complaint is not dismissed, Defendant prays that the Defendant's efforts to appropriately handle clients funds, and disperse proceeds be taken into account. Any recording errors were inadvertent, and unfortunately exacerbated due to the wind down of his law practice. Defendant made great efforts to ensure proper reconciliation of his trust account, including using a third party service (SoftPro) to aid in his efforts. All client funds were accounted for, even though a small amount of checks have not cleared. Since the law practice had closed, with the last closing occurring in February 2008, there were no more transactions to reconcile. Defendant prays that the Grievance Committee take this into account when reviewing this matter.

May 7, 2012



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Michael Park  
Defendant